



# Legal Update

---

June 2015

**The Supreme Court rules that hotel owners can have a pre-compliance review before police can obtain hotel registries without a warrant.**

*City of Los Angeles v Patel*, U.S. Supreme Court, No.13-1175 (2015):

**Background:** In 2003, the respondents, a group of motel operators along with a lodging association, sued the city of Los Angeles in three consolidated cases challenging the constitutionality of city ordinance §41.49(3)(a), which required “every operator of a hotel to keep a record” containing specified information concerning guests and to make this record “available to any officer of the Los Angeles Police Department for inspection” on demand. The Los Angeles Municipal Code §§41.49(2), (3)(a), (4) (2015) The ordinance required that hotel records include “guest names and addresses, the number of people in each guest’s party, the make, model, and license plate number of any guest’s vehicle parked on hotel property, the guest’s date and time of arrival and scheduled departure date, the room number assigned to the guest, the rate charged and amount collected for the room; and the method of payment.” The ordinance requires that hotels maintain a log of guests who stay on the premises for 90 days. If police demand to review these records and hotel operators refuse, they could be charged with a misdemeanor punishable by up to six months in jail or fined \$1,000. This ordinance would not apply if there were exigent circumstances.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.**

The City initially prevailed in the lawsuit but on appeal the Ninth Circuit's decision was reversed. First it was determined that a police officer's nonconsensual inspection of hotel records under §41.49(3)(a) was a Fourth Amendment search because business records were part of the hotel's private property and therefore the hotel could exclude others from examining their contents. The second issue considered was whether the search was reasonable and it was found that it was not because hotel owners were subjected to punishment for failure to turn over their records without first being afforded the opportunity for pre-compliance review. The appeal never addressed whether hotel guests had standing to challenge the issue since they would be impacted if their personal information was shared. Rather the appeal focused on whether (1) the hotel had both a privacy interest in its records, as well as a property-based right to exclude others from its property and (2) whether the Fourth Amendment expressly protects "papers" (such as the hotel's business records and registries) as the hotel's private property. The Supreme Court granted certiorari, and had to consider whether the ordinance was constitutional on both right-to-privacy grounds as well as on the basis of a property owner's right to exclude records from police inspection.

**Conclusion:** In a 5-4 decision, the Supreme Court held that the ordinance was unconstitutional because it required hotel operators to make their registries available to the police on demand and also because it penalized hotel operators for not turning over these records. The majority "concludes that hotel operators should be permitted to have a neutral decision maker review an officer's demand to search the registry before he or she faces penalties for failing to comply. Actual review need only occur in those rare instances where a hotel operator objects to turning over the registry." Furthermore, the majority regarded holding as narrow and it maintained that it does not alter police from issuing administrative subpoenas without probable cause nor does it prevent police from obtaining access to those records where a hotel operator consents to the search, where the officer has a proper administrative warrant, or where some other exception to the warrant requirement applies.

In its decision, the majority disagreed with the petitioner's argument that the search of hotels and motels is closer to an "administrative search" of a highly regulated industry, and therefore there is a lower expectation of privacy. "Contrary to liquor sales, firearms dealing, mining or running an automobile junkyard, the majority did not find that hotel industry is intrinsically dangerous and therefore should not be subject to government oversight."

**How does this impact Massachusetts?** In Massachusetts, there is a state law that requires hotel administrators to maintain a registry of names of hotel guests and to produce this information to law enforcement upon request. Specifically the state law states the following:

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

**G.L. 140 § 27: Register; entry of names; condition precedent to occupancy; retention; inspection; penalty**

**Every innholder, and every lodging house keeper required so to do under section twenty-eight, and every person who shall conduct, control, manage or operate, directly or indirectly, any recreational camp, overnight camp or cabin, motel or manufactured housing community shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room averaging less than four hundred square feet floor area, excepting a private dining room not containing a bed or couch, or opening into a room containing a bed or couch, for any period of the day or night in any part of the premises controlled by the licensee, together with a true and accurate record of the room assigned to such person and of the day and hour when such room is assigned. The entry of the names of the person engaging a room and of the occupants of said room shall be made by said person engaging said room or by an occupant thereof, except that when five or more members of a business, fraternal, or social group or other group having a common interest are engaging rooms, they may designate one person to make said entry on their behalf and prior to occupancy. Until the entry of such name and the record of the room has been made, such person shall not be allowed to occupy privately any room upon the licensed premises. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police. Whoever violates any provision of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both.**

In 1986, this statute was challenged in the *Blinn* case, where a motel owner refused to turn over records to a state trooper who did not have a warrant. The SJC heard the case and held that the state law was constitutional under the 4<sup>th</sup> Amendment and that no search warrant was needed since hotel operators do not have a reasonable expectation of privacy in the registry. *Commonwealth v. Blinn*, 399 Mass. 126 (1986). The SJC emphasized that a motel is a business not a home and therefore it is not unlawful for the state to require that a registry of guest names be kept.

With regard to this recent Supreme Court decision, there are some notable differences between the city ordinance in Los Angeles and the Massachusetts statute. The Massachusetts statute only requires that the name of the guest be kept while the ordinance in Los Angeles required more expansive information, including names of guests, identification numbers, vehicle registration information, and credit card/financial information as well. In light of the Supreme Court decision, Massachusetts may need to revisit its legislation to make sure it is compliant. It

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

is important to note that Massachusetts **never addressed** whether the hotel owners have a right to privacy if the records were designated as private property.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**